IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1565 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANJANABEN R SHAH

Versus

KANAIYALAL MAGANLAL PARIKH

Appearance:

MR MB GANDHI for Petitioner

MR SM BHATT for Respondent No. 1 - Absent

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/02/2001

ORAL JUDGEMENT

This is tenant's revision under Section 29(2) of the Bombay Rent Act, against the judgement and decree passed by the lower appellate Court in favour of the landlord. The brief facts are that the respondent filed

a suit for eviction of the tenant revisionist on the ground that the demised premises was reasonably and bonafide required by him for his personal use and occupation. The suit was contested by the tenant. The trial Court found that the need of the landlord was genuine, bonafide and reasonable. The trial Court then considered the question of comparative hardship. It was the opinion of the trial Court that in case the decree for eviction was not passed, the landlord will not suffer greater hardship, rather the tenant will suffer and therefore, he refused to pass a decree for possession.

Feeling aggrieved, the landlord preferred an appeal which was allowed and the judgement and decree of the trial Court was modified. Decree for possession was granted by the appellate Court with a finding that since the tenant did not make sincere effort to find out alternative accommodation for himself, he will not suffer greater hardship, rather the landlord will suffer greater hardship, who despite his best efforts could not find out suitable accommodation to accommodate his family members on permanent basis.

Feeling aggrieved, the tenant has filed this revision.

The list has been revised thrice, but none appeared for the respondent. As such Shri M.B. Gandhi, learned Counsel for the revisionist tenant was heard and the material on record was examined, so also the judgement of the two Courts below.

Shri Gandhi argued that the judgement of the lower appellate Court is based on surmises and conjectures and that the finding of the lower appellate Court that the landlord would suffer greater hardship can hardly be sustained. After examining the jugement of the two Courts below, I find that certain inferences were drawn by both the Courts below one way or the other. However, the revisional Court is not authorised with any power to enter into any disputed question of fact and substitute its findings. Proceeding on the assumption that the finding of the trial Court was likely to be reversed by the lower appellate Court, it has to be seen what is the effect of change of events and circumstances during the pendency of revision. It is true that if the decree for eviction is to be passed, the tenant is likely to suffer hardship. Mere apprehension of hardship in case of likely decree for eviction is no ground to dismiss the suit of the landlord. However, comparative hardship has to be decided with reference to the facts

and circumstances of the case, requirement of the landlord and tenant, number of members in the family of landlord and tenant and extent of accommodation with the landlord and the tenant. It has also to be seen what steps were taken by the tenant to find out alternative accommodation for himself after he received notice of eviction. It is true that merely on receipt of notice the tenant is not obliged to vacate the accommodation, but he should have made some efforts to find out alternative accommodation. Both sides have to adduce relevant evidence before the Court. The landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after sifting such evidence that the Court must form its conclusion on consideration of all the circumstances of the case as to whether greater hardship would be caused by passing a decree than by refusing to pass it. The case of Phiroze Bamanji Desai Vs. Chandrakant M. Patel, reported in AIR 1974 S.C 1059 can be referred.

The lower appellate Court has rightly observed that the tenant applied for a house in the higher income group scheme of Gujarat Housing Board. His application was registered, but subsequently, he did not press his application and desired that his money deposited with the Housing Board be refunded. No special reason was given why the application for allotment of a house in Gujarat Housing Board scheme was not pressed and refund of money was sought. Money was refunded by the Housing Board to the revisionist. On these facts the lower appellate Court was justified in holding that the tenant was not likely to suffer greater hardship, inasmuch as he could have obtained allotment of house from the Housing Board.

However, the changed circumstances which have been enumerated in the Civil Application have to be considered at this stage for deciding comparative hardship amongst the parties. It is in evidence that there are two rooms and open terrace on the first floor of the same house. The tenant is occupying ground floor. It is also in evidence that these two rooms and terrace were never occupied by the landlord, nor the same were let out to any other person. The view of the lower appellate Court was that these two rooms were insufficient to accommodate the family members of the landlord. The lower appellate Court also found that the three alternative accommodations at the disposal of the landlord at various intervals were not sufficient because the same were never let out to the landlord. However, the changed circumstances mentioned in the Civil

Application are firstly that the landlord has purchased a new flat No. 35/414 in Sargam Apartment in which he is residing. It is not only mere statement of the tenant revisionist, but he corroborates his statement. He has furnished copies of two Caveat Applications filed in this Court. In the first Caveat Application, the address of the landlord is shown as 35/414, Sargam Apartment, Sola Road, Naranpura, Ahmedabad. The same address is given in paragraph 5 of the Caveat Application. The second Caveat Application was also filed in year 1992 by the landlord, wherein also he mentioned his address as 35/414, Sargam Apartment, Sola Road, Naranpura, Ahmedabad and the same address is shown in paragraph 5 of this Caveat Application. In addition to this, the tenant revisionist made personal enquiries from adjoining owners of the house and was informed that the landlord has become owner of flat No. 35/414 of Sargam Apartment. The tenant also made enquiries in the Municipal Corporation, Tax Assessment Department and he came to know that the respondent landlord is the owner of the aforesaid flat No. 35/414 of Sargam Apartment. It is deposed in the Civil Application that this flat measures 90 sq.yards and the built-up portion is sufficient to accommodate all family members of the landlord. In any case the accommodation in this flat taken together with two rooms and terrace on the first floor of the demised premise is certainly sufficient accommodation to accommodate the landlord and his family.

Secondly, at the time when the decree was passed by the lower appellate Court, there were more family members in the family of the landlord. In this Civil Application it is deposed that in the year 1992 when the Civil Application was moved, the respondent was having only 3 members in his family. The reason for reduction in the family members of the landlord's family has also been given, namely - the mother of Kanaiyalal Parikh expired during pendency of the proceedings and that Kanaiyalal has one son Sanjay, who has married and has two children, but recently Sanjay had given divorce and his two children and wife has left the house. As such there are only 3 members in the family of Kanaiyalal consisting of himself, his wife Ramila and his son Sanjay. These three members can conveniently be accommodated in the two rooms and terrace on the first floor of the demise premises and in any case in the built-up portion of flat No. 35/414 in Sargam Apartment. As such if the decree for eviction is refused, no hardship, what to say of greater hardship would be caused to the landlord. It is on record that so far the tenant could not obtain alternative accommodation where he can

shift. It is true that the tenant did not make serious efforts to find out alternative accommodation for himself and it is not the duty of the landlord to search out an alternative accommodation for the tenant. However, in view of the changed circumstances enumerated above, no hardship what to say of greater hardship would be caused to the landlord in case decree for eviction is refused.

In paragraph (D) of the Civil Application, the revisionist has pleaded that he has spent Rs. 1,75,000/in affixing iron gate, boundary wall etc. in the demised premises and unless this amount is paid, he cannot be evicted. This involves adjudication on questions of fact whether such expenditure has been made or not and such exercise cannot be undertaken for the first time in the revision. In this revision the only point for consideration is who will suffer greater hardship. For the reasons stated hereinabove, I am of the view that landlord will not suffer greater hardship in case the decree for eviction is refused. On the other hand, greater hardship will be caused to the tenant revisionist in case he is evicted from the suit accommodation.

For the reasons stated above, the revision succeeds and is allowed. The judgement and decree of the lower appellate Court are set aside and that of the trial Court restored. No order for costs.

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